

**ORDINANCE NO. 05-2024**

**ORDINANCE CREATING SECTION 11.12 OF THE MUNICIPAL CODE  
OF THE CITY OF DARLINGTON**

WHEREAS, to promote the health, safety, comfort, convenience, prosperity, and general welfare of the public by requiring that new and existing mobile vendors provide residents and customers with a level of cleanliness, quality and safety; and

WHEREAS, it is the intent of these regulations to establish reasonable guidelines and restrictions for mobile vendors to operate within city limits and city property by averting imbalanced favor against brick and mortar businesses, while allowing for a diversity of businesses; and

NOW, THEREFORE, the Common Council of the City of Darlington Wisconsin, does ordain as follows:

The Common Council of the City of Darlington do ordain as follows:

Section 1: Section 11.12 of the Municipal Code of Darlington is hereby created to read as follows:

11.12. Vendor's Permit.

- (1) Permit required. Except as permitted in Section (2), no person shall engage in the sale of any food or other items on public streets, in any public park or on any other public property, without first receiving from the Clerk-Treasurer a permit to do so.
- (2) Permit Not Required. The following are not required to have a permit issued or comply with any other requirement or prohibition under this section:
  - (a) A person selling only bottled or canned water or soda, lemonade or similar beverages and baked goods adjacent to their residence, and no other items.
  - (b) A person who operates a business establishment shall not be required to obtain a permit to place items sold at his or her business establishment on the sidewalk adjacent to his or her business.
  - (c) A person participating in a farmer's market and who is selling only items that are grown or produced by the seller or the seller's immediate family.
  - (d) A person or group of individuals who are vending on behalf of a non-profit, religious, government or civic organization.

- (e) A person participating in a City Council, Main Street, Chamber or other broad-based special sanctioned event that has set perimeters, including, but not limited to, event hours, and location.
- (3) Permit Categories and Fees. The following permits shall be made available to vendors upon submittal of the required fee, review of a complete and compliant application, and recommendation of the Police Chief, or designee, as required in subsection 3.(c). A vendor must submit contact information and photo identification, valid copies of its applicable permits and proof of insurance as required herein along with the City provided application. The permit shall be displayed in view during operation hours.
- (a) Annual Permit. Annual permits shall be issued on the 1st day of July each year or thereafter when applied for, and shall expire on the 30th day of June following its issuance. The fee for an annual permit shall be \$30.00.
  - (b) Daily Permit. Daily permits shall be issued for up to 3 consecutive days and the permit shall set forth the date of expiration. The initial fee for a daily permit shall be \$15.00 per for the first day, and \$5.00 per day for each subsequent day.
  - (c) Background Check Required. Upon receipt of an application and fee, the City Clerk-Treasurer shall refer the application to the Police Chief, or specified designee. The Police Chief, or designee, shall make an investigation of the accuracy of the statements made in the application and determine whether the applicant has been convicted of a felony, misdemeanor, statutory violation punishable by forfeiture, or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor, or other offense substantially relate to the circumstances of the permitted activity and, if so, the nature and date of the offense and the penalty assessed.
    - 1. Non-Recommend-If, as a result of background check, the Police Chief, or designee, discovers that any representation on the application contains a material omission or inaccuracy, or the Police Chief, or designee, is of the opinion that the applicant is not a fit person to conduct such sales, the Police Chief, or designee, shall return the application to the City Clerk-Treasurer. Upon return of non-recommendation of an applicant, the City Clerk-Treasurer shall notify the applicant of the non-recommendation by the Police Chief, or designee, along with the reasons therefore. If the applicant contests the non-recommendation, the applicant may be heard by the Council who shall approve or disapprove the application. If the applicant does not contest the non-recommendation within 30 days of the notification of non-recommendation by the City Clerk-Treasurer, the application shall be denied.

2. Recommendation-If as a result of the background check, the Police Chief, or designee, is of the opinion that the applicant is a fit person to conduct such sales, the Police Chief, or designee, shall endorse on the application his/her approval and return the application to the City Clerk and the permit shall be approved.

(4) Prohibited and Required Acts.

(a) A vendor shall not:

1. Sell between the hours of 11:00 p.m. and 6:00 a.m. the following morning. This prohibition shall not apply during any other specific hours specified by the Common Council by an individual request for a daily permit.
2. Sell alcoholic beverages.
3. Block or restrict an individual's access to a business or residential doorway.
4. Block or restrict pedestrians on the public way.
5. Sell beverages in glass containers or glassware.
6. Make any loud noises, including that of unusually loud or noisy generators, or use any sound-amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one hundred-foot radius of the source.
7. Be located in any other location than the City Festival Grounds.

(b) A vendor shall:

1. Obtain any other permit or permit necessary, including, but not limited to, sellers' permits and restaurant permits prior to applying for the City permit, which shall be furnished to the City, and adhere to the requirements of any such other permit.
2. Keep all perishable foods in a safe and sanitary condition.
3. Be present at the vending site at all times during which items are displayed or sold.
4. Remove all vending equipment, including carts, tables, apparatus and merchandise from the vending location during times when vending is not occurring.
5. Provide a trash receptacle of at least 10 gallons at the vending site for customer use.

- (5) To hold a valid permit, the vendor must have in force adequate liability insurance and must agree to indemnify, defend, and hold the City, its employees and agents, harmless against all claims, liability, loss, damage, or expense incurred by the City as the result of any injury to or death of any person or damage to property caused by or resulting from the activities for which the permit is granted. As evidence of liability insurance, the applicant shall furnish a Certificate of Insurance, on a form acceptable to the City, evidencing the existence of commercial general liability insurance (including

contractual liability insurance) naming the City, its employees and agents as additional insureds, with minimum limits of \$300,000.00 in the aggregate. The Certificate of Insurance shall provide 30 days' written notice to the City upon cancellation or nonrenewal or material change in the policy.

- (6) Permits and Identifying Devices Not Transferable. Permits and permit identifying devices shall be nontransferable except upon order of the Clerk-Treasurer.
- (7) Sale of Unwholesome Food Prohibited. No vendor shall sell any food or food product that is unwholesome or tainted, or that is unclean, or that has been handled in an unclean manner, or has been exposed to unclean or contaminating things or conditions, or contrary to any rules and regulations adopted by the State or Lafayette County.
- (8) Permit Suspension and Revocation.
  - (a) The Police Department may require any transient merchant to produce his or her permit for inspection. If any vendor does not have a permit, the Police Department may direct the transient merchant to stop operations, and may issue a citation to the violator or violators. If any vendor has a permit, but is in violation of the terms of his or her permit, the police may require the transient merchant to correct the violation. The police may issue a citation to the violator. If the vendor is unwilling or unable to immediately correct the violation, the police may direct the transient merchant to stop operations, and may issue a citation to the violator. The Police Chief shall report all convictions resulting from violations of this section to the city Clerk-Treasurer. The City Clerk-Treasurer shall maintain a record of each permit issued and each report of violation.
  - (b) Any permit issued in accordance with this section is subject to summary revocation at any time that the holder thereof is guilty of a violation of any of the provisions of this Code or county or state laws governing the sale or handling of food. Any person to whom such an order is issued shall immediately comply therewith, but, upon written petition to the Clerk-Treasurer, shall be afforded a hearing before the Council within 21 working days of such petition.
  - (c) The Police Department shall have authority to remove or cause the removal of any vending equipment or merchandise found on the street, sidewalk, terrace, or other vending location in violation of any regulations established within this ordinance. In addition to any forfeiture, the violator shall be liable for any removal, towing, and storage charges incurred by the department.
  - (d) For serious or repeated violations of any of the requirements of this section, or for interference with a city official in the performance of his or her duties, a permit may be revoked after an opportunity for a hearing has been provided by the Council.

Prior to such action, the Clerk-Treasurer shall notify the permit holder, in writing, stating the reasons for which the permit is subject to revocation, and advising that the permit shall be revoked at the end of 5 working days following service of such notice, unless the permit holder files with the Clerk-Treasurer a request for a hearing within such 5-day period.

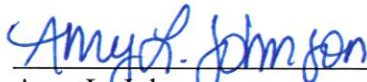
- (e) The hearings provided for in this section shall be conducted by the Council at a time and place designated by the Mayor. The Clerk-Treasurer shall furnish the permit holder with a written report of the hearing decision.
- (9) Penalties. A person who violates any provision of this section shall be subject, at the discretion of the court, to any or all of the following penalties:
  - (a) A forfeiture of not less than \$20.00 nor more than \$200.00 for each violation.
  - (b) A suspension of the vendor's permit for not less than 10 days nor more than 30 days, or a revocation of the vendor's permit for the remainder of its term.
  - (c) Any violations of City of Darlington ordinances will be prosecuted to the extent allowed by law.

Section 2: This Ordinance shall take effect the day after passage and publication as provided by law.



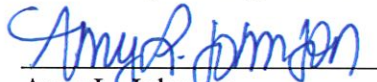
Mike McDermott, Mayor

ATTEST:



Amy L. Johnson  
Clerk-Treasurer

The above and foregoing Ordinance was duly introduced by Alderman Pickett and seconded by Alderman Boll and unanimously adopted at a regular meeting of the Common Council of the City of Darlington held on the 16<sup>th</sup> day of July, 2024.



Amy L. Johnson  
Clerk-Treasurer

